

Contact: Paul Smith (202)224-9854

Senate Commerce Committee
Hearing on Global Tobacco Settlement Legislation
March 11, 1997

I appreciate the opportunity to testify again and present my views on the proposed global tobacco legislation. I feel like I am getting to be a member of this Committee.

As I said last week, I am eager to work with you, Mr. Chairman, and members of the Committee.

I have drafted a bill (S. 1530, the PROTECT Act) which is comprehensive and which has worked through many of the tough questions associated with devising a national anti-tobacco program that would work well.

As a starting point in drafting your mark, I would urge the Committee to use my bill -- which is very similar to yours in many ways, Mr. Chairman.

That being said, I have no pride of authorship. I am supportive of whatever it takes to get a good bill enacted.

After considerable study, it has become abundantly clear to me that the proposal put forth by 40 States almost a year ago represents the best chance we have had in a generation to curb the widespread use of an extremely deadly, addictive product which is harming our youth and literally killing adults.

I can only appear here today for a few minutes, because I am chairing a hearing in the Judiciary Committee, but I wanted provide you with the reasons I see for doing a bill, and for doing a bill based on the AGs' proposed settlement.

There are several principles which I believe we should use in drafting a bill:
--It must be comprehensive in nature, which public health experts have told us has the best chance of combating tobacco use.

--It should include:

- * flexible, community-based funding for public health programs, such as tobacco use prevention and cessation and counter-advertising;
- * broad, constitutionally-permissible mechanisms to limit advertising;
- * well-defined liability limitations, including settlement of the State and local suits;
- * substantial new funding for biomedical research;
- * a program to transition farmers to non-tobacco-related livelihoods; and
- * a strong mechanism to ensure continued oversight of the tobacco industry, such as the proposed "look-back" penalties.

-- Although I believe that current legal authority for FDA regulation of tobacco products is at best murky, I would not be opposed to inclusion in a comprehensive bill of a provision allowing the agency jurisdiction in this area. I believe any FDA provision should be drafted as a new section to the Federal Food, Drug and Cosmetic Act, since it is hard to argue that tobacco products are in any way safe and effective, the critical tests for current-law regulation of drugs and medical devices.

I would urge you to include the provisions from the Jeffords-Hatch bill as the FDA section of your bill should you choose to include a food and drug title.

-- The scope of the bill should be limited to tobacco-related activities. Any attempt to broaden use of the funds beyond tobacco will dilute the effectiveness of the program and squander the opportunity we have to stop youth smoking.

I recognize that there is a great temptation to go with a "tax-and-spend" bill, with varying levels of taxes being proposed. The flaw in this logic is that you cannot tax away the companies' First Amendment rights, and therefore such an approach would not include important advertising restrictions.

There has been much discussion about the wisdom of drafting a bill which the tobacco

companies agree to. I do not advocate such a bill. However, to be realistic, unless all the parties who were originally at the bargaining table and who made the proposed settlement possible do not have some level of acquiescence to the bill, however reluctant, the fact is that we risk jeopardizing enactment of a substantial program and its successful implementation.

I aim for a program that can be implemented now, not litigated for years. I would not say this in the Judiciary Committee, but to you I would say "let us not make the lawyers rich, let us stop kids from smoking."

By necessity, this requires some measure of liability reform, the shape of which I am willing to discuss. With such provisions, we will:

- lessen the possibility of a continued, unstable litigation environment with unpredictable funding streams for any new comprehensive program. By earmarking up to one-third of total payments, that's about \$5 billion in my bill, we are increasing the likelihood that people injured by smoking who prevail in court will be paid, especially with the information contained in the document depository.
- decrease the likelihood that companies will merely seek the protection of a bankruptcy court to avoid financial responsibility. Bankruptcies could: jeopardize funding; give the larger companies monopoly or near-monopoly status; encourage smaller new companies with no liability history to enter the market; dramatically increase the possibilities for black market sales; and increase imports from neighboring countries with less regulation than in the United States; and
- guarantee that a comprehensive program with broad advertising restrictions is implemented. Companies have testified before your Committee as well as mine that they will not voluntarily yield their First Amendment rights. I do not perceive that as a threat as much as good business sense for companies which are marketing a legal product.

Mr. Chairman, I must leave to chair the Judiciary hearing I mentioned earlier, and to work on some more Commerce Committee legislation as you urged at our last hearing. On the way I may stop by the Labor Committee markup and see if I can create some mischief there as well!